

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
NPCR, Inc. d/b/a Nextel Partners)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the States of)	
Alabama, Florida, Georgia, Pennsylvania,)	
Tennessee, and Virginia)	
)	
Nextel Partners of Upstate New York, Inc.)	
d/b/a Nextel Partners)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the State of)	
New York)	

**REPLY COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION
REGARDING THE APPLICATION FOR REVIEW FILED BY THE RURAL LOCAL
EXCHANGE CARRIERS**

The United States Telecom Association (USTA)¹ submits its reply comments through the undersigned, pursuant to section 1.115(d) of the Federal Communications Commission's (FCC's or Commission's) rules, regarding the Application of Review of the Rural Local Exchange Carriers (Application for Review), which was filed in the above-referenced proceeding in response to the Commission's Nextel ETC Order.² USTA submits these reply comments in

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

² *Federal-State Joint Board on Universal Service; NPCR, Inc. d/b/a Nextel Partners; Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida; Petition for*

support of the Rural Incumbent Local Exchange Carriers' (Rural ILECs') request in the Application for Review that the Commission suspend consideration of new or pending petitions for eligible telecommunications carrier (ETC) designations, and specifically, those in areas served by rural telephone companies, pending the Commission's action in the ETC Designation NPRM,³ which is currently before the Commission and which requires Commission action by the end of February 2005. The Rural ILECs have sufficiently demonstrated that the Bureau's continued designations of ETCs in markets served by rural telephone companies could conflict with the decision to be rendered by the Commission in the ETC Designation NPRM.

Many of the comments filed in response to the ETC Designation NPRM, including comments filed by USTA, recommend that the Commission strengthen the standards for designating an ETC and make such standards mandatory requirements, not permissive guidelines. Similarly, USTA advocated that there should be only one ETC in a high-cost area, adding that competitive ETCs should be required to overcome a rebuttable presumption that it is not in the public interest to have more than one ETC, particularly in areas served by rural telephone companies. If the Commission adopts any of these recommendations, or others proposed by other commenters, they could have a significant impact on what carriers, if any, are designated as ETCs. It is possible that carriers with new or pending petitions for ETC designation before the Commission, which may be designated shortly, may not be designated as ETCs based on the Commission's decisions in the ETC Designation NPRM. It should be

Designation as an Eligible Telecommunications Carrier in the State of Georgia; Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania; Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Order, CC Docket no. 96-45, DA 04-2667 (rel. Aug. 25, 2004) (Nextel ETC Order).

obvious that, given this probable scenario, carriers seeking ETC status will urgently seek to obtain ETC designation before the possible adoption of any changes in the requirements. Extrapolating further, if carriers that are currently being designated as ETCs would not be eligible to be designated as ETCs after the Commission concludes the ETC Designation proceeding, then the Commission will have unnecessarily increased the size of the Universal Service Fund. It is not a prudent use of federal funds to continue designating ETCs under a process that is under review by the Commission and that it knows may be revised shortly to the extent that carriers qualifying today may not be able to qualify in a few months.

There would be very little harm, if any, in postponing a decision on whether to grant ETC status for new and pending applicants, particularly in rural telephone company areas, until after the Commission completes its review of, and issues an Order in, the ETC Designation NPRM, and is able to apply its determinations made there to any request made to the Commission for an ETC designation. Pursuant to section 254(a)(2) of the Telecommunications Act of 1996,³ the Commission is required to reach a decision in the ETC Designation NPRM by February 27, 2005 – one year after the Joint Board issued its recommendation on the ETC designation process – so it would only be for a short period of time that the Commission would be postponing decisions on granting ETC status on new and pending ETC petitions. USTA proposes that the Commission could find that any carrier whose ETC status is delayed pending the Commission's issuance of a decision in the ETC Designation NPRM, but that still qualified as an ETC under whatever requirements the Commission may adopt in the ETC Designation proceeding, could

³ See generally *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004) (ETC Designation NPRM).

⁴ See 47 U.S.C. §254(a)(2).

receive universal service support retroactive to the date of the suspension or the date of its application for ETC status, whichever is later.

USTA believes that the Commission's actions in continuing to grant new and pending ETC designation petitions may prejudice some of the matters under consideration by the Commission in the ETC Designation NPRM, notably the matters of strengthening ETC designation standards and limiting ETC designations to one carrier, particularly designations in rural high-cost areas. By continuing to grant ETC designations while the Commission is considering revisions to the ETC designation process, it is possible that, as Verizon stated in its Reply Comments, "as more of these ETC petitions are granted, it may add pressure on the Commission to reject some or all of the proposals that are necessary to contain growth of the fund size."⁵ Certainly it would be better to wait until the Commission reaches a conclusion on the ETC Designation NPRM before granting any new or pending ETC applications for carriers that may not qualify for ETC status under any new guidelines or requirements.

CONCLUSION

In sum, USTA agrees with the Rural ILECs that from a broad perspective the "Nextel ETC Order failed to take into account the effect of the decision on the Commission's larger efforts to rationalize the ETC designation process and to improve the long-term sustainability of the Universal Service Fund."⁶ Accordingly, USTA urges the Commission to grant the Rural

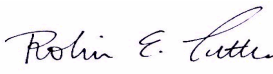
⁵ Verizon Reply Comments at 3.

⁶ Application for Review at 3.

ILECs' request that the Commission defer consideration of new and pending petitions for ETC designations until the Commission has issued an Order on the ETC Designation NPRM.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on October 22, 2004, the aforementioned Reply Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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